

Appl. No. 10/757,813  
Docket No. 7294C  
Amdt. dated June 3, 2009  
Reply to Office Action mailed on March 3, 2009  
Customer No. 27752

## REMARKS

### Claim Status

Claims 1-3, 5-7, 10-11, 15-17, and 19 are pending in the present application. No additional claims fee is believed to be due.

Claims 4, 8-9 and 12-14 were previously canceled without prejudice. Claim 18 has been canceled without prejudice.

Claims 1 and 10 are herein amended. Support for the amendment is found at least on page 27, lines 4-20 of the specification as originally filed.

New Claim 19 was previously added herein.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

### Rejections Under 35 U.S.C. §112

Claim 18 has been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claim 18 has been canceled. As such, Applicants respectfully request that the rejection be withdrawn.

### Rejections Under 35 U.S.C. §103(a) Over Thompson '208, Thompson '135, Sneyd, Ahr, Radel, Moore and Lash

Claims 1-3, 5-7, 10-11 and 15-19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Thompson et al., U.S. Patent No. 5,281,208 (hereinafter "Thompson '208"); and thereby Thompson, U.S. Patent No. 3,929,135 (hereinafter "Thompson '135"); Sneyd et al., European Patent No. 0215417 (hereinafter "Sneyd"); Ahr, U.S. Patent No. 4,463,045 (hereinafter "Ahr"); and thereby Radel et al., U.S. Patent No. 4,342,314 (hereinafter "Radel"); Moore et al., U.S. Patent No. 4,898,642 (hereinafter "Moore"); and Lash et al., U.S. Patent No. 4,935,022 (hereinafter "Lash"). Applicants respectfully traverse this rejection, as the references do not establish a *prima facie* case of obviousness.

First, Thompson '208 and/or Thompson '135, Sneyd, Ahr, Radel, Moore, and Lash do not establish a *prima facie* case of obviousness because they do not teach or suggest all of

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the claim limitations of amended, independent Claims 1 and 10 (see MPEP § 2143.03). Specifically, as discussed above, Claims 1 and 10 are herein amended to recite a fecal storage element comprising materials selected from a specific group. None of the references cited herein teaches or suggests a fecal storage element comprising any one of the claimed materials.

Second, the references teach away from the use of a fecal storage element comprising the claimed materials and, therefore, does not support a *prima facie* case of obviousness (see MPEP § 2145(X)(D)). See, for example, Thompson ‘208 at Col. 8, lines 53-63:

The objective is to provide a gradient of capillary suction between the topsheet and underlying layer or layers of the articles herein, such that fluid is drawn into the “z” direction and away from the surface of the article into its ultimate storage layer. Empirically, capillary suction is related to adhesion tension and inversely related to the size of the openings—i.e., in the typical case, the openings in the topsheet will be larger than the intra-fiber capillary channels, which, in turn, will be larger than the inter-fiber capillary channels in a fibrous storage core.

In contrast to Thompson ‘208’s emphasis on the importance of a gradient of capillary suction, the present specification explicitly defines “macroporous” as referring “to materials having pores too large to effect capillary transport of fluid.” See page 27, lines 10-11 (emphasis added). Thus, Thompson ‘208 teaches away from the presently claimed materials.

Further, the Office Action states that “the claims do not require a ‘macroporous storage element.’” As such, Applicants have amended Claims 1 and 10 to clearly recite the presence of a fecal storage element comprising materials selected from a specific group.

For at least these reasons, amended Claims 1 and 10 are believed to be patentable over Thompson ‘208 and/or Thompson ‘135, Sneyd, Ahr, Radel, Moore, and Lash. All other claims depend from Claim 1 or Claim 10, and therefore include all the limitations of Claim 1 or Claim 10. Thus, Claims 2-3, 5-7, 11, 15-17, and 19 are believed to be patentable over the references for at least the same reasons as Claims 1 and 10. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

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Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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